

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC COMMENT PERIOD ON PROPOSED AMENDMENTS TO THE LIST OF EQUIPMENT DEFECTS THAT SUBSTANTIALLY IMPAIR THE EFFECTIVENESS OF GASOLINE VAPOR RECOVERY SYSTEMS

The Executive Officer of the Air Resources Board (ARB or Board) is proposing to amend the list of equipment defects that substantially impair the effectiveness of gasoline vapor recovery systems used in motor vehicle refueling operations. Health and Safety Code (Health & Saf. Code) section 41960.2(c) requires the Executive Officer to adopt and periodically update the list of defects, which is incorporated by reference in section 94006, title 17, California Code of Regulations (CCR), and is otherwise known as the Vapor Recovery Equipment Defects (VRED) List. Such defects are sufficiently egregious to warrant the removal of the fueling point from service until the defect is repaired.

Written comments on the proposed regulatory amendments must be received by August 3, 2011 in order to be considered by the Executive Officer. No oral public hearing is currently scheduled but you may by July 20, 2011, request the Executive Officer to conduct a public hearing. If an oral public hearing is requested by that date, it will be scheduled to be conducted by the Executive Officer or his or her delegate pursuant to the authority set forth in sections 39515 and 39516 of the Health & Saf. Code. Notice of the time, date, and place of the hearing will be provided by separate notice.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendment to California Code of Regulations, title 17 section 94006(b) and the VRED List (adopted September 23, 2002 and last amended June 17, 2008) that is incorporated by reference therein. Staff is recommending that the Executive Officer approve the proposed amendments to the VRED List as described herein.

Background: In accordance with section 41954 of the Health & Saf. Code, ARB certifies systems for the control of gasoline vapors resulting from motor vehicle fueling operations. The certification is accomplished by the issuance of an Executive Order (EO) identifying the system that is certified and the conditions of certification. The sale or installation of an uncertified system is prohibited.

Section 41960.2(c) of the Health & Saf. Code requires the Executive Officer of ARB to: 1) identify and list equipment defects in systems for the control of gasoline vapors resulting from motor vehicle fueling operations that substantially impair the effectiveness of the systems in reducing air contaminants, and 2) periodically update the list to reflect changes in equipment technology or performance. The initial list of defects was developed in 1982 and was most recently updated in 2008. The current VRED List

identifies each Executive Order certifying a system and lists the defects in each system that substantially impairs the effectiveness of the system.

The Executive Officer is proposing amendments to the VRED List in order to improve the effectiveness of the vapor recovery program by enhancing the ability of enforcement personnel and gasoline dispensing facility (GDF) operators to identify and repair those defects that could significantly impact the effectiveness of the vapor recovery system. Inspectors from air pollution control districts and air quality management districts periodically inspect GDFs to ensure they are in good working order. When a component on the VRED List is documented by an inspector to contain a listed defect, Health & Saf. Code section 41960.2(d) requires that the equipment be removed from service until it has been replaced, repaired, or adjusted and reinspected by air district personnel.

The proposed amendments would update the current VRED List in one of three ways: 1) inclusion of defects for equipment certified in EOs signed since the last amendment to the existing VRED List; 2) new defect verification procedures; and 3) editorial changes to remove minor inconsistencies, and improve clarity. Staff of ARB believes that amending the current VRED List will enhance the ability of anyone using it to identify, and repair or replace, those defects that could significantly affect the effectiveness of gasoline vapor recovery systems.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed action, which includes a detailed explanation of the proposed amendments and a summary of the potential environmental and economic impacts of the proposal. The report is titled "Staff Report: Initial Statement of Reasons for Proposed Amendments to the List of Equipment Defects that Substantially Impair the Effectiveness of Gasoline Vapor Recovery Systems."

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, on June 15, 2011.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB's website listed below.

Inquiries concerning the substance of the proposed amendments should be directed to Ranjit Bhullar, Manager of the Vapor Recovery In-Use Program Section, at (916) 322-0223 or Melinda Weaver, Air Pollution Specialist, at (916) 322-8918.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, or Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB website for this rulemaking at www.arb.ca.gov/regact/2011/vrdef11/vrdef11.htm

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any State agency or in federal funding to the State, costs or mandate to any local agency or school district whether or not reimbursable by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary cost or savings to State or local agencies

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This determination is based on the fact that the proposed regulatory action establishes no new requirements, but rather clarifies existing defects. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined pursuant to California Code of Regulations, title 1, section 4 that the adoption of the proposed regulatory action does affect small business. It makes compliance with existing regulations easier by clarifying the requirements.

The Executive Officer is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action, since avoidance or repair of the listed defects is already required.

Before taking final action on the proposed regulatory action, the Executive Officer must determine that no reasonable alternative considered by the Executive Officer, or otherwise identified and brought to the attention of the Executive Officer would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The Executive Officer has determined no effective or less burdensome reasonable alternative exists.

SUBMITTAL OF COMMENTS

This regulatory proceeding will be conducted through the submittal of written documents. No oral public hearing is currently scheduled.

Written comments on this regulatory proposal must be received **no later than 5:00 p.m., August 3, 2011**, and addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

As stated above, no oral public hearing is scheduled at this time. However, an oral public hearing will be scheduled if any interested person or his or her duly authorized representative requests such a hearing no later than 15 days prior to the close of the written comment period which is July 20, 2011. The request for a hearing may be submitted in the same manner as written comments.

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

STATUTORY AUTHORITY

This regulatory action is proposed in accordance with the authority granted to ARB and the Executive Officer in sections 39600, 39601, and 41960.2 of the Health & Saf. Code. This action is proposed to implement, interpret, and make specific sections 41954 and 41960.2 of the Health & Saf. Code.

REGULATORY AMENDMENT PROCEDURES

This regulatory proceeding will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the close of the comment period, the Executive Officer may adopt the regulatory language as originally proposed or with non-substantial or grammatical modifications. The Executive Officer may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for additional written comment at least 15 days before it is adopted. The public may request a copy of the modified regulatory text, if applicable, from ARB's Public Information Office, Visitor and Environmental Services Center, 1001 I Street, First Floor, Sacramento, California 95814, (916) 322-2990.

SPECIAL ACCOMMODATION REQUEST

If you need this document in an alternate format (i.e., Braille, large print, etc.) or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alternativo (por decir, sistema Braille, o en impresión grande) u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

CALIFORNIA AIR RESOURCES BOARD

/s/

James N. Goldstene
Executive Officer

Date: June 7, 2011